

control, and therefore its eligibility to participate, into question, the RE should advise the Contract Compliance Officer and request that an investigation be performed.

Record Keeping

All records relating to the DBE program shall be maintained by the Prime Contractor and each Subcontractor during the course of the project and preserved for a period of 3 years from the date of completion of the contract.

The Prime Contractor or Subcontractor shall make records pertaining to the DBE program available for inspection, copying or transcription by authorized representatives of the ITD or the FHWA and shall permit such representatives to interview employees as necessary.

Failure to submit the required records upon request, to make such records available, or to permit representatives to interview employees may be grounds for sanctions.

Sanctions

Whenever the RE believes that the Contractor or DBE Subcontractor is not operating in compliance with the terms of Part III, Disadvantaged Business Enterprise Requirements of the Civil Rights Special Provisions (based on an investigation and documentation of the circumstances), the RE will take the following action:

- Advise the Prime Contractor, in writing, of the specific infractions that have been observed and indicate the length of time (not to exceed five working days) that will be allowed in which the Prime Contractor must take corrective action. Further advise the Prime Contractor that all or part of progress payments will be withheld if the deficiencies are not corrected within the specified time period. Withhold payment if not corrected.
- If the Contractor subsequently fails to correct the deficiencies or fails to have the DBE correct the deficiencies, the RE may request direction from the District Engineer and CCO as to appropriate action under the circumstances. After consultation with the EEOM and Legal Counsel, the contract provisions permit the RE to take any of the following actions for any breach of the DBE provisions of the contract:
 - Withhold all or part of progress payments until it is determined the Contractor is in compliance.
 - Suspend the contract, in whole or in part, until the Contractor is found to be in compliance with no progress payment being made during this time, no time extension made and no reimbursement of any additional expenses including field and home office overhead.
 - Cancel or terminate the contract for cause as authorized under Section 108.08 of the Contract Specifications.

Assess against the contractor's final payment on this contract or any progress payments on current or future Idaho Federal-Aid projects an amount equal to the value of the DBE committed work items that were not performed by the committed DBE firm. However, if the failure is the first by the contractor, and ITD

determines the failure was an unintentional error or oversight, the amount to be deducted may be reduced to one-half (1/2) of the value of the un-obtained DBE participation based on the committed work items. In addition to any other sanctions, willful failure of the contractor or a DBE to comply with this contract or with the Federal DBE regulations may result in disqualification from further contracting, subcontracting, or other participation in Idaho Transportation Department projects

Payments to DBE Subcontractors

To ensure that all obligations under contracts awarded to DBEs are met, the RE will review the Contractor's DBE involvement efforts during the performance of the contract. Contractors are required to pay each subcontractor for satisfactory performance of its contract items no later than twenty (20) calendar days from receipt of each payment the Contractor receives from ITD. The Contractor shall return retainage payments to each subcontractor within twenty (20) calendar days after the subcontractor's work is satisfactorily completed. The Contractor shall certify to the RE that payment to each subcontractor has been made on the certification forms provided by ITD.

The RE shall consider that a subcontractor's work is satisfactorily completed in accordance with 49 CFR 26.29, "a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented."

113.04 TRAINING SPECIAL PROVISIONS (TSP)

General

The primary purpose of the Training Special Provisions Program is to train and upgrade minorities and women toward journey level status in crafts where they are under-represented. The contract specifies the number of training hours to be filled. The Contractor should assign training hours to crafts that are under utilized in minorities or women. Minorities and women in training positions can be counted toward the EEO goals. RE's should encourage Contractors to bring trainees into the work force early in the contract to provide adequate opportunity for trainees apprentices to complete their programs and to reduce the risk of being found in noncompliance with the training special provisions. Prior to commencing construction, the Contractor shall submit to the RE a plan showing how the Contractor will meet the TSP requirements. This plan will include the number of trainees to be trained, the crafts that the training will cover and the training programs to be used. This plan will also show the starting time for the training in each craft.

Establishing Project Training Goals

The Roadway Design Engineer, in coordination with District personnel, and the Contract Compliance Officer, determines which construction contracts will contain Training Special Provisions and the number of training positions that can be accommodated on each project. Before and throughout the construction season, the Roadway Design Engineer and District Design personnel evaluate the potential availability of work under the contracts, the duration of the work (to ensure adequate time for completion of training) and the potential long-term benefits to the trainees. Assignment of training slots to specific contracts is based on:

- Availability of minorities, women and disadvantaged.
- Potential for effective training.
- Duration of the contract.
- Dollar amount of the contract.
- Total normal work force the average bidder is expected to use.
- Geographic location.
- Type of work.
- Need for additional journeymen in the area.
- Total training hours established and committed to FHWA.
- Ratio of journeymen to trainees during normal operations.

If it is determined that the crafts on a project are not under represented by minorities or women, then training requirements will be removed from the contract.

Placing Trainees

The Contractor may use either Department of Labor or ITD/FHWA-approved programs to be eligible for reimbursement at the rate of \$.80 per hour under the TSP Program. Other programs may be submitted for approval by DOL or ITD/FHWA but, must be approved prior to the start of the training on the project. **Trainees or apprentices and their training programs must be approved by the RE before the trainees start work and the Contractor is eligible for reimbursement.** (RE's may refer to the EEO Contract Compliance Plan for further detail in this process.)

Prime Contractors may request additional training hours or may relinquish training requirements to Subcontractors. However, if the positions are relinquished to a Subcontractor, minority/women trainees in those positions cannot be counted toward the minority/women goals of the Prime Contractor - only toward the goals of the Subcontractor. Also, the Prime Contractor remains responsible for the TSP requirements being met.

The order of priority for filling training positions is as follows:

- Minorities and women receive first priority.
- Disadvantaged persons, as defined by the DOL (see Exhibit D of the EEO Contract Compliance Plan).

- Nondisadvantaged Caucasian males. The Contractor is allowed to accept nondisadvantaged Caucasian males into the TSP Program, only after the Contractor has made and documented a good faith effort to hire minorities, women, and the disadvantaged.

Contract provisions require that Contractors submit name, Social Security number, craft, ethnicity and sex of all proposed trainees along with copies of their training programs for approval by the RE. A copy of this information is also furnished to the EEO/ST Coordinator or designed DRI. **(Information is required prior to the trainee starting work. No hours can be counted towards the TSP requirements until information is received.)**

When using ITD/FHWA, or Contractor programs, the above information is provided by using the ITD-2777 "On the Job Training Agreement." The Contractor must identify trainees/apprentices on payrolls by race, sex, crafts, status within the program and other relevant information, which may be requested.

Contractors may utilize programs approved by the U. S. Department of Labor or programs approved by ITD/FHWA. Contractors may also develop their own programs, but DOL or ITD/FHWA must approve them before training commences on the project. RE's may contact the Bureau of Apprenticeship and Training, USDOL, Boise, Idaho telephone (208) 334-1013, to verify DOL programs.

The following ITD/FHWA-approved programs may be utilized: (available from District EEO/ST Coordinators)

Heavy-duty Mechanic	2,080 hours
Equipment Operator	2,080 hours
Highway Construction Carpenter	2,080 hours
Truck Driver	1,040 hours
Highway Cement Finisher	1,040 hours
Highway Construction Laborer	1,040 hours

Contractors must make an effort to select training programs that address crafts that are under represented by minorities and women. There will be no Training Special Provisions requirement included in the contract if there is no under representation of minorities or women in any of the Contractor's work crafts, or in construction trades based on ITD's evaluation/analysis by geographic areas of the state.

From payroll information furnished by the Contractor, trainee/apprentice data and activity will be monitored by the Residency/Regional staff to ensure compliance with the provisions of the contract and the individual training programs.

Residency/Regional personnel will maintain information on each trainee/apprentice that contains the following:

- Name
- Social Security number
- Wage rate
- Training hours accumulated on previous jobs

- Job category (craft)
- Number of hours obtained in the approved training program
- Age
- Gender
- Ethnicity
- Hire date
- Name of Contractor
- Changes in work status
- Transfer to other project
- Termination reason

Monitoring the TSP Program

The Contractor is responsible for identifying each trainee to the RE prior to the trainee's start of work and should be so advised at the preconstruction meeting.

All trainees will keep a record of their training activities -- either USDOL "Bureau of Apprenticeship and Training Monthly Progress Report" or ITD-2776 "Trainee's Monthly Progress Record." A completed copy of the Progress Record will be provided to the RE within seven (7) days after the last working day of the month.

Project inspectors must make a daily diary entry for each trainee observed on the job. The entry shall include the trainee's name and the work they were observed doing. Example: Trainee John Doe - operating roller. Entries are made during the Inspector's normal listing of the Contractor's personnel and equipment. If the RE observes:

- That the pay rate is not increased at time increments specified in the training program, or
- That training is not being given in the craft specified, or
- That not all phases of a training program are being incorporated into the work program of each employee, or
- Any other irregularities

The RE will take action as with any specification item.

Training programs approved for use under the Training Special Provision will include documentation similar to that used by the Bureau of Apprenticeship and Training, or as approved by the EEO Office. All Contractors are encouraged to register their programs with the "Bureau of Apprenticeships and Training with the Department of Labor."

All changes to an approved trainee's status shall be reported by the Contractor to the RE, using an ITD-2775 "Training Action Request."

When a trainee completes all requirements of a training program, the Contractor must furnish the trainee/apprentice evidence that the trainee has successfully completed the training. (e.g. letter, certificate, card, etc.) Documentation of the trainee/apprentice's graduation from a program shall be provided to the RE.

Reimbursement to the Contractor under the Training Special Provision is made at the rate of \$.80 per hour of acceptable training given each trainee under an approved program.

The EEO Office will report annually, in December, to FHWA on the progress of the TSP requirements within each federal-aid contract. This information will be obtained by the CCO from the REs.

The District EEO/ST Coordinator and the CCO will audit compliance with the Training Special Provisions Program through spot checks during the project and at the completion of the project. The audit shall determine compliance with the Training Special Provisions by the Contractor and ITD

113.05 TRIBAL EMPLOYMENT RIGHTS ORDINANCES (TERO)

General

Projects located, in whole or in part, on or adjacent to Indian lands may be subject to tribal ordinances governing employment practices and fees. Such projects are identified in the contract proposal under the heading "Tribal Special Provisions."

Before commencing work on a project covered by Tribal Employment Rights Ordinances, the RE must have received a facsimile copy of the agreement between the Contractor and the Tribal Representative establishing preferential employment rights for Native Americans and the amount of the TERO fee, if applicable. The District Engineer, or designated representative must periodically (at least monthly) contact the appropriate TERO Representative for assurance that the agreement is being honored. A memo concerning the contact must be transmitted to the CCO with a copy to the Construction Engineer.

All forms identified within this Section can be found on the ITD Form Finders system. For a more detailed explanation of the use of the identified forms refer to the approved EEO Contract Compliance Plan and/or the approved DBE Plan.

EXHIBITS

113.1	Federal Aid Highway Construction Contractors Annual EEO Report	FHWA-1391
113.2A	Contractor EEO Compliance Report	ITD-0086
113.2B	Resident Engineer on Site Inspection Equal Employment Opportunity	ITD-2674
113.3A	DBE Commitments	ITD-2396
113.3B	Disadvantaged Business Enterprise Job Site Review Commercially Useful Function Determination	ITD-1701
113.4A	On the Job Training Agreement	ITD-2777
113.4B	Trainee Monthly Progress Record	ITD-2776
113.4C	Training Action Request	ITD-2775